

STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

DOVER CITY EMPLOYEES, AFSCME,
AFL-CIO, LOCAL #572

v.

BERNARD RYDER, SUPERINTENDENT
OF SCHOOLS, DOVER, NEW HAMPSHIRE

CASE NO. A-0438:2

DECISION NO. 80004

APPEARANCES

Representing the Dover City Employees, AFSCME, AFL-CIO, Local #572:

James J. Barry, Jr., Esquire, Counsel
Wm. J. McDonough, Exec. Dir., AFSCME
Dennis M. Fogarty, Member of Local #572
George S. Nagy, Jr., " " " "

Representing Bernard Ryder, Superintendent of Schools:

Douglas C. Gray, Esquire, Counsel
Bernard Ryder, Supt. of Schools

BACKGROUND

On August 17, 1979 Local #572, AFSCME by its representative Wm. J. McDonough filed improper practice charges with this Board against the Dover School Department and Bernard Ryder, Superintendent of Schools alleging that negotiations between the School Department and Local #572 had reached impasse and mediation was called into play which resulted in some areas of agreement. Further the principal improper charge alleged the contract as signed was not the agreement reached at the negotiations table. The major issue for consideration by PELRB was whether or not the date of November 9, 1978 contained on page IV of the signed agreement was the negotiated date on which increases in wages were to be based.

Hearing on the matter was held September 6, 1979. Attorney James Barry for the complainant, Local #572, argued that the November 9th date was not the date agreed to and introduced correspondence from Mediator McNally which was not specific as to dates of record.

Attorney Barry's witness, McDonough, testified that an agreement was reached as a result of mediation sessions and further that the wage agreement was for increases of 30 cents per hour on May 1, 1979 and 5 cents per hour on November 1, 1979 and based on wages they were earning at that time. There was no decision on wages effective in November.

McDonough testified that the parties had agreed that Superintendent Ryder would have the agreement typed and mailed to AFSCME for signature. He identified (1) a copy of the agreement forwarded to him which bore his signature and that of the School Board representatives and contained the November 9, 1978 date; and (2) an August 27, 1979 letter with attachment from Mr. Ryder listing the rates of pay for custodians effective November 9, 1978, April 27, 1979 and May 1, 1979; this information was forwarded to him upon request.

The School Board by its Counsel, Attorney Gray, argued that the contract was duly negotiated, drafted and signed in good faith by all parties and produced witnesses and evidence in minutes of various negotiating sessions along with a letter of transmittal of the signed and ratified contract.

FINDINGS OF FACT

1. The existing contract was negotiated in good faith by the parties and duly ratified and signed.
2. The November 9, 1978 date was clear to both parties and the parties had ample time to review the contract for errors or omissions prior to ratification. None were noted until certain employees felt they had not received the negotiated increases.
3. The letter from Mediator McNally, in response to McDonough's request, did in fact verify the effective date of the increases as stated in the signed agreement, however it did not confirm or deny the existence of the November 9th date in question.
4. On April 18, 1979, Superintendent Ryder mailed to McDonough a letter with attachment, Page 4, Article IV of the contract "Wage Rates", Section 4.1, Effective Date and Section 4.2 Longevity, for his review and approval prior to typing of the final contract for signatures.

Section 4.1 clearly stated:

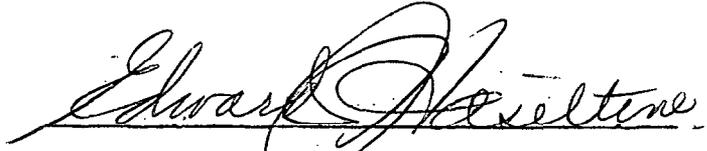
"All personnel covered by this contract shall receive an hourly wage increase of thirty (30) cents per hour over that which they were paid on November 9, 1978."

5. The contract in its totality containing the November 9, 1978 date on Page 4 was agreed to and signed by authorized representatives on May 28, 1979, well over a month after being submitted for approval.
6. No factual evidence was presented that the November 9, 1978 date had been attested or changed.

DECISION AND ORDER

Based upon the evidence and testimony presented at the hearing, the Board finds:

- A. No improper charge against the Dover School District or its Superintendent, Mr. Ryder.
- B. The improper charge is hereby dismissed.



EDWARD J. HASELTINE, CHAIRMAN
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 17th day of January, 1980

By unanimous vote. Chairman Edward J. Haseltine presiding; members Moriarty Cummings and Mayhew present and voting. Also present, Executive Director, Evelyn LeBrun.